U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 25 2013 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the AAO on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an elementary school teacher in When the petitioner filed the petition, she taught second grade at Maryland. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT 90), P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dep't of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" is included here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed Form I-140, Immigrant Petition for Alien Worker, on June 26, 2012. In an accompanying statement, counsel stated that the petitioner seeks the waiver "based on her Master's Degree in Education; almost . . . (15) years of post-baccalaureate progressive work experience . . . and most importantly; the awards and distinctions she received as a teacher, among others." Academic degrees, experience, and recognition for achievements can all support a claim of exceptional ability. *See* 8 C.F.R. §§ 204.5(k)(3)(ii)(A), (B), and (F), respectively. Under the plain wording of section 203(b)(2)(A) of the Act, aliens of exceptional ability remain subject to the job offer requirement. Therefore, evidence of exceptional ability cannot suffice to qualify the petitioner for the national interest waiver of that requirement.

Counsel stated that the petitioner's "request for National Interest Waiver is based on the improvement to the United States Education more particularly in the field of Education, which she has actually been fulfilling . . . in the State of Maryland since 2007." Counsel cited no evidence to establish the extent to which the petitioner's past work has improved education in the United States.

The petitioner submitted copies of award certificates she has received over the course of her teaching career. Most of the certificates are from the Philippines, and are local or regional in nature. The petitioner received the two most recent certificates in the United States. Both of them are local in nature. One is a "Science Achievement Certificate" indicating that the petitioner's class placed third in the "2012 Science Fair." The other is a "Certificate of Appreciation" from "for successfully implementing the Number Worlds Pilot Program" in 2011. The petitioner received other certificates in the Philippines and the United States, for her completion of training programs or participation in various activities.

The petitioner submitted letters from teachers, administrators, and parents of students at schools where she has taught. These witnesses indicated that the petitioner is a competent and valued teacher, but they did not establish that the petitioner's work has had more than a local impact.

Counsel asserted that statements from the petitioner's students show that the petitioner's work "completely and realistically re-created the young lives of [those] students worth living." Counsel quoted from the claimed statements, but the record does not contain the statements themselves. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Also, such statements attest to the depth, but not the breadth, of the petitioner's impact; they do not show that the petitioner's work has had an effect beyond the local level.

The director issued a request for evidence on November 19, 2012. The director quoted from several witness letters, but stated: "no corroborative primary evidence has been presented specifying the direct role the beneficiary's work has played in the field of Education as a whole." The director instructed the petitioner to "submit documentary evidence that the beneficiary's contributions will impart national-level benefits. . . . The petitioner must establish that the beneficiary has a past record of specific prior achievement with some degree of influence on the field as a whole."

In response, counsel stated:

> Immigration Act of 1990 (IMMACT 90) which enacted . . . the 'National Interest Waiver[']' included 'educators' as among the targets of this legislation, specifically stated – 'this bill provides for vital increases for entry on the basis of skills, infusing the ranks of our scientists and engineers and educators with new blood and new ideas.'

Elsewhere in the brief, counsel clarified that the quoted language comes not from the statute itself, but from comments made by then-President George H.W. Bush as he signed the legislation. IMMACT 90 did in fact create the national interest waiver, and the president mentioned "educators" in his remarks, but it does not follow that a blanket waiver for educators was either the intent or the result of the legislation. The same statute plainly subjected professionals – including "scientists and engineers and educators" – to the job offer requirement.

Counsel contended that the *NYSDOT* decision provided no specific definition of the "national interest," and that Congress filled this void with the passage of the No Child Left Behind Act (NCLBA):

> Congress has in effect remarkably engraved the missing definition upon the concept of 'in the national interest,' centered on the 'Best Interest of American School Children.' More importantly, U.S. Congress also provided the means to achieve this now defined 'in the national interest,' i.e., 'Hiring and Retaining Highly Qualified Teachers.' Interestingly, "NCLB Act" also specified the 'Standard of a Highly Qualified Teacher.'
>
> Indeed, the "NCLB Act" has elucidated the previously dark avenue for educator-national interest waivers.
>
> With this, the Service now has a definite working took in defining what is 'in the national interest' including the clear standard on what qualifications must be required from NIW teacher self-petitioners, as mandated by No Child Left Behind Act of 2001.

In discussing the NCLBA, above, counsel placed several phrases in quotation marks, but none of those phrases appears in the text of the NCLBA. The term "best interest," with respect to children, appears only in provisions relating to homeless students. The NCLBA contains no mention of the national interest waiver or any immigration benefits for foreign teachers, and it did not amend section 203(b)(2)(B) of the Act (which created the waiver). Counsel contended that Congress specifically intended to make the waiver available to "highly qualified teachers" when it passed the NCLBA, and that "favorable decisions for the NIW teachers" is thereby "honoring the Congressional intent in No Child Left Behind Act of 2001." Counsel, however, cited no specific language from the statute itself or its legislative history to support this claim.

Statutory interpretation begins with the language of the statute itself. *Pennsylvania Department of Public Welfare v. Davenport*, 495 U.S. 552 (1990). Statutory language must be given conclusive weight unless the legislature expresses an intention to the contrary. *Int'l. Brotherhood of Electrical Workers, Local Union No. 474, AFL-CIO v. NLRB*, 814 F.2d 697 (D.C. Cir. 1987). Here, the petitioner has not established that Congress intended to exempt teachers from the job offer requirement, either through section 203(b)(2) of the Act, the NCLBA, or any other federal legislation. Congress's only direct statement on the matter, at section 203(b)(2)(A) of the Act, has been to apply, not waive, the job offer requirement.

The NCLBA did not amend section 203(b)(2) of the Act or otherwise mention the national interest waiver. In contrast, section 5 of the Nursing Relief for Disadvantaged Areas Act of 1999, Pub.L. 106-95 (November 12, 1999), specifically amended the Immigration and Nationality Act by adding section 203(b)(2)(B)(ii) to that Act, to create special waiver provisions for certain physicians. Congress not only can amend the Act to clarify the waiver provisions, but has in fact done so in direct response to *NYSDOT*. Counsel has not established that the NCLBA indirectly implies a similar legislative change.

The NCLBA and other federal initiatives establish that the federal government places a priority on improving the quality of education, but counsel did not establish that any of these programs had the express or implied result of changing immigration policy toward teachers. Section 203(b)(2)(A) of the Act remains in effect, and therefore teachers, "highly qualified" or otherwise, remain subject to the job offer requirement.

Counsel asserts that the petitioner's "proposed employment is national in scope" because of the "National Priority Goal of Closing the Achievement Gap." "Highly Qualified Teachers," as a class, play a significant collective role in implementing the provisions of the NCLBA. It does not follow, however, that every such teacher individually qualifies for special immigration benefits as a result, or that collective benefit justifies a blanket waiver for every such teacher, when the waiver otherwise rests on the specific merits of individual intending immigrants.

Counsel quoted President Obama: "I'm committed to moving our country to the middle to the top of the pack in science and math education over the next decade." Counsel contended that the president has thus "effectively set the critical timeline within which to meet [this] goal. . . . the Chief Executive of the country has himself determined that the national interest would not be served if the petitioner was required to obtain a labor certificate [*sic*] for the proposed employment." Counsel did not establish that granting the waiver to the petitioner would make a difference in meeting "the critical timeline." While the president's remarks represent one of the current administration's policy goals, those words do not supersede standing legislation, regulations and case law.

Counsel cited a report indicating that the Teach for America program has produced disappointing results. This assertion would be relevant if the only two available options were to continue relying on the flawed Teach for America program, or to grant the national interest waiver, but this is not the case. In repeatedly citing the NCLBA in support of the waiver claim, counsel did not cite any evidence to show that the NCLBA had produced better results than Teach for America. More importantly, the purpose of the present proceeding is not to compare the merits of Teach for America and the NCLBA, but rather to determine whether the petitioner qualifies for an immigration benefit.

Counsel cited a 2010 Department of Education report, *ESEA Blueprint for Reform*. Counsel stated:

> The U.S. Department of Education's finding that meeting the NCLB Act's requirements for the "highly qualified" standard "does not predict or ensure that a teacher will be successful at increasing student learning" because while the NCLB

> requirements set minimum standards for entry into teaching of core academic subjects, they have not driven strong improvements in what matters most: the effectiveness of teachers in raising student achievement which demonstrates that teacher effectiveness contributes more to improving student academic outcomes than any other school characteristic.

The finding that "the NCLB requirements . . . have not driven strong improvements in . . . the effectiveness of teachers in raising student achievement" appears to undermine the claim that the NCLBA has set the standard for the national interest with respect to education.

Counsel asserted that "the U.S. workers in the teaching industry are not as competitive in the job market against their foreign counter-parts who have advanced degree or equivalent and are fully certified." Counsel cited no support for this general assertion, except for "the case of [the] Teach for America Program." Counsel did not demonstrate that the "recent college graduates" in Teach for America are representative of "U.S. workers in the teaching industry."

Counsel claimed that the labor certification process presents a "dilemma" because "The United States Department of Labor minimum education requirement Report for High School Teacher is just a bachelor's degree," but "the employer is required by No Child Left Behind . . . to employ highly qualified teachers." Counsel asserted: "Doing a labor certification process for the beneficiary . . . [would] require only a bachelor's degree, [and therefore] may not meet the objective of employers to hire highly qualified teachers pursuant to No Child Left Behind (NCLB) Law [and] other federal pronouncements."

Section 9101(23) of the NCLBA defines the term "highly qualified teacher." Briefly, by the statutory definition, a "highly qualified" school teacher:

- has obtained full State certification as a teacher or passed the State teacher licensing examination, and holds a license to teach in such State;
- holds at least a bachelor's degree; and
- demonstrates competence in the academic subjects he or she teaches.

Counsel did not explain how the above requirements are incompatible with the existing labor certification process. The minimum degree requirement, which counsel has emphasized, is the same for labor certification as it is for a highly qualified teacher (*i.e.*, a bachelor's degree).

Counsel stated:

> there is more likelihood than not as dictated by experience that replacing 'Highly Qualified Teachers' with those having only minimum qualification that these federally funded schools would fail to meet the high standard required under the No Child Left Behind (NCLB) Law resulting not only [in] closure of these schools but loss of work for those working in those schools.

Counsel identified no "federally funded school" that has closed as a result of failing to meet NCLBA standards. Attributing this claim to "experience" cannot suffice in this regard. Also, counsel has not shown that awarding the waiver to the petitioner would prevent school closures on a nationally significant scale. This assertion is, instead, effectively another claim in support of a blanket waiver for "Highly Qualified Teachers," as the national effect would be collective rather than individual.

Counsel cited a need for improvement in science, technology, engineering and mathematics (STEM) education, but the record does not establish that the petitioner specializes in teaching those subjects. Therefore, counsel has not established the relevance of this assertion, even if one teacher would be in a position to resolve the national crisis in teaching those subjects.

Turning to the petitioner's individual qualifications, counsel listed several previously submitted exhibits, but did not explain how these exhibits satisfy the *NYSDOT* national interest test. A successful teaching career does not establish or imply eligibility for the waiver.

As an "equitable consideration," counsel stated that the petitioner

> is firmly commited to continue teaching at . However, is currently barred for a two-year period (i.e. from March 16, 2012 to March 15, 2014) from filing any employment-based immigrant and/or nonimmigrant petition . . . arising from willful violations of the H-1B regulations at 20 C.F.R. Part 655, subparts H and I. . . . Thus, through no fault of her own, [the petitioner] would not be able to continue teaching in unless her E21 visa petition is approved, not to mention the fact that she has already firmly established a life here in the United States.

The temporary debarment order is not grounds for granting a permanent immigration benefit. The assertion that the petitioner "has already firmly established a life here in the United States" does not establish eligibility for the national interest waiver.

The director denied the petition on April 4, 2013. The director found that the petitioner had met only the first prong of the *NYSDOT* national interest test, pertaining to the substantial intrinsic merit of her occupation. The director discussed the petitioner's evidence and determined that it does not show that the petitioner's work has had a significant impact beyond the districts where she has worked. The director paraphrased *NYSDOT* by stating:

> A waiver of the job offer is not warranted solely for the purpose of ameliorating a local labor shortage, because the labor certification process is already in place to address such shortages. Similarly, the Department of Labor allows a prospective U.S. employer to specify the minimum education, training, experience, and other special requirements needed to qualify for the position in question.

Similar language appears in *NYSDOT* at 218. That same decision specified "elementary school teachers" as an example of an occupation with substantial intrinsic merit, but that lacks national

scope. *Id.* at 217 n.3. The director concluded that the petitioner had not established eligibility for the waiver.

On appeal, counsel contends that the director erred by focusing on *NYSDOT*, because Congress passed the NCLBA "more than a decade after [the passage of] IMMACT 90 . . . and three years after *NYSDOT* was designated as a precedent decision." Counsel does not identify any provision in the NCLBA that directly amends the Immigration and Nationality Act or otherwise affects the immigration benefits available to teachers.

Counsel contends that *NYSDOT* "requires overly burdensome evidence on the qualification of the self-petitioner, identical to EB-1 extraordinary requirements when the law makes it available to those either 'with an advanced degree' or 'exceptional ability.'" The evidentiary requirements to establish extraordinary ability appear at 8 C.F.R. § 204.5(h)(3). Those requirements are not "identical" to the guidelines in *NYSDOT*, and counsel has identified no strong similarities. Concerning counsel's assertion that the waiver is "available to those either 'with an advanced degree' or 'exceptional ability,'" those qualifications make one eligible to apply for the waiver, but do not guarantee the approval of that application.

Counsel stated that the director, in the request for evidence,

> required vague and overly burdensome evidence more fitting to the cause of an Engineer. USCIS is expected to stipulate clear basis for evidences requested and at least meritoriously rebut the evidences submitted in the initial filing and in the response to Request for Evidence. Here, the Director failed to explain why NCLB was undermined when the law provides the standards to achieve the national educational interest. Unlike in the *Matter of New York State Dept. of Transportation*, United States Congress legislated NCLB to serve as guidance to USCIS in granting legal residence to 'Highly Qualified Teachers.'

The relevant points in *NYSDOT* are not specific to engineers. Counsel's claim that USCIS must "rebut" the petitioner's previously submitted evidence implies that the petitioner's evidence established an initial presumption of eligibility that does not actually exist. Counsel asserted that "the director failed to explain why NCLB was undermined," but counsel identifies no specific legislative or regulatory provisions that exempt school teachers from *NYSDOT* or reduce its impact on them. In stating "Congress legislated NCLB to serve as guidance to USCIS," counsel claims knowledge of Congressional intent, but cites no source for this knowledge; the statute itself offers no support for counsel's claim. The text of the NCLBA does not mention the Department of Homeland Security, USCIS, foreign teachers, the job offer requirement, labor certification, the national interest waiver, or the phrases "national interest" or "national educational interest." Its only references to immigrants concern "immigrant students" and "immigrant children and youth."

Counsel states: "Assuming *NYSDOT* is apposite, the perennial question is what is the standard to be met in order that an NIW petitioner's proposed employment will have national-level benefit." This

passage incorrectly implies that *NYSDOT*'s applicability is debatable. As a designated precedent decision, *NYSDOT* is binding on all USCIS employees. *See* 8 C.F.R. § 103.3(c).

Counsel repeats, word for word, several pages of assertions from the response to the request for evidence, discussing the NCLBA and other federal education initiatives. There is no support in statute, regulation, or case law to support counsel's primary contention that the overall importance of education outweighs the statutory job offer requirement that remains in effect. *NYSDOT* established that USCIS will not declare "blanket waivers for entire fields of specialization." *Id.* at 217. Since the publication of *NYSDOT*, Congress has created only one blanket waiver, for certain physicians as described at section 203(b)(2)(B)(ii) of the Act. USCIS will not infer an implied blanket waiver from legislation, such as the NCLBA, that contains no immigration-related provisions for the classification that the petitioner seeks.

Counsel states:

> USCIS-Texas Service Center has not specified what it meant by 'any contributions of unusual significance that would warrant a national interest waiver.' There is no clarity on this particular requirement and yet, the Director has easily dismissed the incomparable accomplishments of [the petitioner] as submitted in her Case File. By requiring the petitioner to submit evidence of ambiguous nature is 'unduly burdensome' and in effect tantamount to requiring 'impossible evidence' for being extremely subjective.
>
> The lack of clear standard on this particular requirement leaves the finding of insufficiency by USCIS-Texas Service Center highly speculative, without factual basis and rather drawn in thin air.
>
> The mandate for 'flexibility in the adjudication of NIW cases' . . . must be construed liberally rather than strictly compared to the New York State Department of Transportation case. USCIS is now required by United States Congress through the No Child Left Behind Act of 2001 . . . to make it "flexible["] and thus possible rather than impossible in favor of the 'Best Interest of the School Children,' by granting waivers to 'Highly Qualified Teachers' who have already been serving the cause instead of requiring labor certification which may only reveal uncommitted U.S. workers with minimum education qualification.

The petitioner has not submitted evidence to establish that her accomplishments are "incomparable" as counsel claims. After suggesting that the director's decision is, in counsel's words, "drawn in thin air," counsel asserts that the NCLBA did not merely imply that USCIS should grant the waiver to "highly qualified teachers," it "required" USCIS to do so. The NCLBA does not establish or imply a blanket waiver for teachers.

Counsel asserts that the petitioner "is an effective teacher in raising student achievement in STEM" and points to her "proven success in raising proficiency of her students." Counsel cites no evidence

on appeal to support these claims, which come a page after counsel cited statistics showing that remains an underperforming district in Maryland. Counsel's assertions are not evidence. *Matter of Obaigbena* at 634 n.2, citing *Matter of Ramirez-Sanchez* at 506.

Counsel asserts that the petitioner "has submitted overwhelming evidence" of eligibility, and lists several previously submitted exhibits under the heading "Awards and Recognition." The petitioner has not established that these materials are "overwhelming evidence" in her favor. Local recognition can help support a claim of exceptional ability, under the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), but exceptional ability does not establish or imply eligibility for the waiver.

The petitioner has not established a past record of achievement at a level that would justify a waiver of the job offer requirement. The petitioner need not demonstrate notoriety on the scale of national acclaim, but the national interest waiver contemplates that the petitioner's influence be national in scope. *NYSDOT* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole.").

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession, such as teaching, in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The AAO will dismiss the appeal for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.